



## **BEFORE THE MONTGOMERY COUNTY ETHICS COMMISSION**

### **Waiver No. 03-017 (Item 03-017)**

Absent a waiver, a former public employee cannot work for someone else on a “specific matter” for 10 years after the last date the employee “significantly participated” in that matter as a public employee. § 19A-13(a).<sup>1</sup> Michael Kinney, a former public employee, wants to work for a County subcontractor, Street Smarts, on the same specific matter that he significantly participated in as a public employee. But, because the proposed employment is not likely to create an actual conflict of interest, we will grant the employee a waiver under § 19A-8(c)

As an engineer with the Department of Public Works and Transportation, Mr. Kinney was responsible for all engineering work associated with the County’s Red Light Photo Enforcement Program. The employee’s responsibilities included working with County police to select sites for installation of the cameras, conducting field assessments to determine constructability, designing the red light camera infrastructure that DPWT was responsible to install (*e.g.*, conduits, loop detectors, wiring to traffic signal cabinets, etc.), and issuing work orders to DPWT contractors and in-house technical staff for the construction of the infrastructure. Mr. Kinney resigned in November 2002.

Mr. Kinney now provides engineering consulting services for Street Smarts, a DPWT subcontractor. That subcontractor would like to assign the former employee to conduct engineering tasks on the Red Light Photo Enforcement Program. DPWT acknowledges that although the employee “will be performing the same tasks that he did while employed with the County, these services are clearly for the County’s benefit and will be in the County’s best interest.”

Because Mr. Kinney proposes to work for someone else on a “specific matter” within 10 years after the last date the employee “significantly participated” in that matter as a public employee, he must obtain a waiver to proceed. Section 19A-8(c) provides that the Commission may waive the prohibitions of § 19A-13 if it finds that (1) failing to grant the waiver may reduce the ability of the County to hire or retain highly qualified employees or (2) the proposed employment is not likely to create an actual conflict of interest.

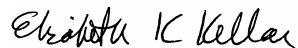
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<sup>1</sup> Unless indicated otherwise, all references are to the Montgomery County Code (1994), as amended.

We find that the proposed employment is not likely to create an actual conflict of interest with the County because the employee will essentially be doing the work for the County's benefit, albeit through a subcontractor. Thus, the employee may work for this subcontractor on this specific matter only so long as that work is done pursuant to a contract or subcontract with the County.

Moreover, there is no violation of § 19A-13(b) because the employee did not significantly participate in regulating the subcontractor or have official responsibility concerning a County contract with the subcontractor.

FOR THE COMMISSION:

A handwritten signature in cursive script, appearing to read "Elizabeth K. Kellar".

Elizabeth K. Kellar, Chair

May 15, 2003